

UNITES STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE PET FOOD PRODUCTS
LIABILITY LITIGATION

: MDL DOCKET NO. 1850

:
: Case No. 07-2867

:
: **DECLARATION OF**
: **CHRISTOPHER J. MIFFLIN IN**
: **SUPPORT OF DEFENDANTS'**
: **UNOPPOSED MOTION TO**
: **LIMIT THE RETENTION OF**
: **ORGANIZED RECALLED**
: **PRODUCT, RAW WHEAT**
: **GLUTEN AND UNORGANIZED**
: **RECALLED PRODUCT**

STATE OF KANSAS)

) ss:

COUNTY OF LYON)

Christopher J. Mifflin, being first sworn upon oath, says:

1) I am the Executive Vice-President of Operations of Menu Foods GenPar Limited ("Menu Foods") which is the administrator of the Defendant Menu Foods Income Fund et al. I am making this Declaration based upon personal knowledge and am competent to testify to the matters stated below.

2) In my position as Executive Vice-President of Operations for Menu Foods, my duties and responsibilities include managing and overseeing the storage of the recalled pet food and raw wheat gluten currently being stored by Menu Foods, and Menu Foods' efforts to combat infestation of same.

3) In March, April and May 2007, Menu Foods recalled certain pet food that may have been tainted with contaminated wheat gluten purchased from Chem Nutra, Inc. As a result, Menu Foods is holding a tremendous amount of recalled pet food and raw wheat gluten.

4) Menu Foods currently is storing three categories of product: "Organized Product," "Unorganized Material;" and "raw wheat gluten." Menu Foods currently is storing approximately 2,123,974 cases of Organized Product, amounting to approximately 51,000,000 individual units of Organized Product, approximately 647,917 cases of Unorganized Materials and approximately 98,000 lbs. of raw wheat gluten. Menu Foods' cost for storing the Organized Product, Unorganized Material and raw wheat gluten is approximately \$1,032,000 per year.

5) In certain locations where the Organized Product, Unorganized Material and raw wheat gluten are being stored, infestation in the form of flying insects, larvae and rodents is present, requiring periodic fumigation. Menu Foods has fumigated the storage facilities in the past and continues to vigilantly monitor the need for additional fumigation in the storage facilities.

6) The Organized Product is pet food contained in cans or pouches that is in cases and stored on full or partial pallets in Menu Foods' warehouses or in third party warehouses being rented by Menu Foods. This pet food either never left Menu Foods' possession or was distributed to retailers and returned to Menu Foods in unopened cases or pallets. Exhibit A to this declaration contains representative photographs of the Organized Product as it is being stored by Menu Foods.

7) The Organized Product can be identified by brand and product type (also referred to as a "SKU"), and by date of production (collectively, the "SKU date"). Exhibit B to

this declaration contains an inventory organized by SKU date of the Organized Product Menu Foods currently is holding in storage. This inventory reflects the number of units Menu Foods possesses for each SKU date. Where Menu Foods does not possess any units for a given SKU date, the column entitled "Total Units Stored" contains a "-". Where the Total Units Stored column contains "VP," the product on the corresponding SKU date was a component of a variety pack (which includes multiple products in a single box), and determining whether Menu Foods possesses such component would require Menu Foods to search through all of the variety packs in its possession, a timely endeavor, which Menu Foods has commenced. Menu Foods may have units in its possession for such SKU dates. Where the Total Units Stored column contains "NS," the product on the corresponding SKU date was never shipped.

8) I understand that The Iams Company, Nestle Purina Pet Care Company and Hill's Pet Nutrition have prepared similar inventories, which also reflect the number of units of Menu Foods product each possesses for each SKU date. Based thereon, Iams and Nestle represent that they have units of Menu Foods product for SKU dates on which Menu Foods does not possess any product within its Organized Product. Based on Iams, Nestle and Hills' respective inventories and the representations therein as to SKU dates for which they have Menu Foods units, as well as Menu Foods' SKU date inventory, there are 110 SKU dates for which there is zero units of Menu Foods product within the Organized Product held by Menu Foods, Iams, Nestle and Hills. There are records to show the source of wheat gluten on each of those particular dates of manufacture for the Organized Product.

9) The Unorganized Material is product and material that was returned to Menu Foods from retailers in an unorganized, haphazard manner and was not well packaged in most instances. The Unorganized Material is stored in much the same manner that it was

returned to Menu Foods, in banana boxes, cardboard boxes, drums and cardboard bins. This Unorganized Material is comprised of various items, including items that are not pet food, large quantities of non-recall pet food (i.e., pet food that was not manufactured by Menu Foods and product that was not the subject of the recall but was nonetheless returned by retailers), non-pet food items, trash, competitors' products and some recall product. It appears in many instances that retailers simply swept these materials from their shelves and returned them to Menu Foods.


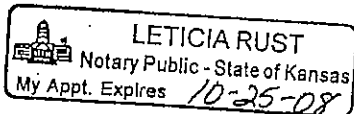
10) Due to the manner in which the Unorganized Material was packaged and returned to Menu Foods, much of it contains broken or punctured units of pet food that have created infestation problems and health and safety concerns associated with open, perishable food. Although Menu Foods has attempted to store and maintain the Unorganized Material safely, often fumigating and repackaging it, doing so is an enormous task. Thus, the Unorganized Material is causing the most risk to the public health. Exhibit C to this declaration contains representative photographs of the Unorganized Material as it is being stored by Menu Foods, including photographs reflecting infestation. Menu Foods' Unorganized Material has not been inventoried. To organize and inventory the Unorganized Material, Menu Foods would need to use an estimated 179,543 man hours at an estimated cost of \$3,801,000. To inventory the Unorganized Material, Menu Foods' employees would have to cull its recalled product from the Unorganized Material, manually handle and read each can or pouch of such recalled product to identify the product and manufacture date in order to sort the unit by SKU date, and then create an actual inventory.

11) The raw wheat gluten is raw wheat gluten which Menu Foods purchased from ChemNutra, Inc. as an ingredient for its pet food. The raw wheat gluten is stored in sacks, bins and large totes. The raw wheat gluten is perishable and, in many instances, is causing infestation problems and health and safety problems. Menu Foods is capable of storing a representative sample of the raw wheat gluten without creating health and safety risks which have been identified by the FDA.



CHRISTOPHER J. MIFFLIN

Sworn to and subscribed in my presence by the said Christopher J. Mifflin, this 10th day of December 2007.



Notary Public

My Commission expires: 10-25-08